

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 09, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS ALEX MORRISON, JR.,

Defendant.

No. 1:21-CR-02032-SMJ-1

**CASE MANAGEMENT ORDER**

The Court now enters the following Case Management Order, which sets forth the hearings and requirements the parties will observe in this matter. To the extent this Order conflicts with any previously-entered Orders in this matter, this Order shall govern. All counsel are expected to carefully read and abide by this Order. The Court will grant relief from the requirements in this Order only upon motion and good cause shown.

**IT IS HEREBY ORDERED:**

- 1. Local Criminal Rules.** Counsel shall comply with the Eastern District of Washington Local Criminal Rules of Procedure (LCrR), except where specifically modified below or by subsequent Order.

1       **2.     Emailing the Court.** Where this Order requires counsel to email  
2 documents to the Court, all documents shall be attached to the email  
3 in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject  
4 line of each email shall be formatted as follows:

5                   **[Case No.]; [Case Name]; [Title of Document]**

6                   (e.g.: *13-cr-9999-SMJ; USA v. Doe; Trial Brief*)

7       **3.     Discovery**

8       **A.** All discovery documents must be Bates-stamped with a unique  
9 identifier and must be produced digitally in a text-searchable  
10 format. The Court will grant relief from this requirement only  
11 in exceptional circumstances, upon motion and good cause  
12 shown.

13       **B.** Production of discovery shall be governed by Local Criminal  
14 Rule 16. *See* LCrR 16.

15       **C.** The Court presumes a request for discovery and disclosure  
16 under Federal Rules of Evidence 404(b), 608(b), and 609, *Brady*  
17 *v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405  
18 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29 (9th  
19 Cir. 1991), and their progeny, and as such these items are  
20

ordered disclosed by the deadline set forth in Local Criminal Rule 16.

**D.** At arraignment or within 14 days thereafter, the Government is required to disclose evidence relating to Defendant's guilt or punishment that might reasonably be considered favorable to the Defendant. *See* LCrR 16(a)(6); *see also Brady*, 373 U.S. 83 and *United States v. Agurs*, 427 U.S. 97 (1976); Fed. R. Crim. P. 5(f).<sup>1</sup> This is a continuing duty for newly discovered evidence. LCrR 16(c). *See also* ECF No. 12.

**E.** Pursuant to Federal Rule of Criminal Procedure 16(d)(2), failure to comply may result in an order permitting the discovery or inspection; granting a continuance; or any other order that is just under the circumstances (including contempt, sanctions, referral to a disciplinary authority, dismissal of charges, exclusion of evidence or witnesses, and adverse jury instructions).

#### **4. Expert-Witness Summaries**

**A.** When each party produces to opposing counsel summaries of its expert-witness testimony for which disclosure is required under

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<sup>1</sup> Nothing in this requirement enlarges or diminishes the Government's obligation to disclose information and evidence to the Defendant under *Brady* and its progeny.

1 Federal Rule of Criminal Procedure 16 and Local Criminal Rule  
2 16, counsel shall also email an electronic copy of the summary  
3 to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

4 **B.** All summaries of expert witness testimony must conform to  
5 Federal Rule of Criminal Procedure 16, Local Criminal Rule 16,  
6 and applicable case law interpreting those Rules. The Court will  
7 not permit an expert witness to testify about opinions which are  
8 not explicitly expressed in that expert's summary. *See, e.g.,*  
9 *United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008).

10 **5. CM/ECF Technical Assistance.** Parties requiring technical assistance  
11 concerning the CM/ECF system, such as the procedures for filing non-  
12 scannable exhibits, shall consult the District's "Electronic How To"  
13 page (<https://www.waed.uscourts.gov/electronic-how>) or contact the  
14 CM/ECF Help Desk by phone at (866) 236-5100 or (509) 458-3410 or  
15 by email at [ecfinfo@waed.uscourts.gov](mailto:ecfinfo@waed.uscourts.gov). Inquiries requesting technical  
16 assistance concerning the CM/ECF system shall not be directed to the  
17 Judge's chambers.

18 **6. Motions Practice**

19 **A. Generally.** All motions shall either be: a) noted for hearing  
20 without oral argument fourteen (14) days after filing, or b) noted

1 for hearing with oral argument at the pretrial conference  
2 pursuant to Local Criminal Rule 12(c). Responses and replies  
3 to motions must be filed in accordance with Local Criminal Rule  
4 45 and 47, which incorporate the requirements of Local Rule  
5 7.1.

6 ***B. Expedited Hearing.*** Any party seeking an expedited hearing on  
7 a time-sensitive matter must comply with Local Criminal Rule  
8 12(c)(3).

9 **7. Witness Testimony.** At any hearing, including trial, in which witness  
10 testimony is given, the witness must testify in Court and, absent  
11 exceptional circumstances, may not appear by telephone or video  
12 conference.

13 ***A.*** Any party planning to solicit witness testimony at a pretrial  
14 hearing must file and email to the Court a witness list **no later**  
15 **than seventy hours before the hearing.**

16 **8. Trial Continuances**

17 ***A. Motion Deadline.*** All motions to continue the trial must be  
18 heard before or at the pretrial conference. **Any motion to**  
19 **continue trial made after the pretrial conference has**  
20

occurred will not be granted absent exceptional circumstances.

**B. *Statement of Reasons.*** If the Defendant seeks a continuance, a Speedy Trial Waiver and Statement of Reasons in support of the motion to continue must be filed contemporaneously with the motion.<sup>2</sup> The Statement of Reasons must 1) be signed by the Defendant, 2) be signed by a certified translator, if applicable, and 3) indicate the latest date upon which Defendant is willing to proceed to trial.

**C. *Procedure.*** Before filing a motion to continue, counsel shall first contact the Courtroom Deputy at (509) 943-8173 to obtain new pretrial conference and trial dates consistent with the length of the requested trial continuance. Thereafter, counsel shall confer with opposing counsel regarding case management deadlines<sup>3</sup> consistent with the new pretrial conference and trial date. **All motions to continue must include proposed case**

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<sup>2</sup> The Court's Speedy Trial Waiver and Statement of Reasons form can be found at the following link: [http://www.waed.uscourts.gov/sites/default/files/forms/smj\\_stmt\\_reasons\\_mot\\_to\\_cont.pdf](http://www.waed.uscourts.gov/sites/default/files/forms/smj_stmt_reasons_mot_to_cont.pdf).

<sup>3</sup> A form with the Court's standard case management deadlines can be found at the following link: <http://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines.pdf>.

1                    **management deadlines (either joint or individual) to ensure**  
2                    **the to-be-imposed deadlines are best suited to this case.**

3            **9. Pretrial Conference**

4            **A.**     The Pretrial Conference is **SET for October 19, 2021, at 11:45**  
5                    **A.M. in YAKIMA.** At this hearing, the Court will hear **ALL**  
6                    pretrial motions that are noted for oral argument.

7            **B.**     All pretrial conferences are scheduled to last no more than  
8                    **thirty (30) minutes**, with each side allotted **fifteen (15)**  
9                    **minutes** to present their own motions and resist motions by  
10                   opposing counsel. If any party anticipates requiring longer than  
11                   fifteen minutes, that party must notify the Courtroom Deputy at  
12                   least seven (7) days prior to the hearing. **Any party who fails**  
13                   **to provide this notice will be limited to fifteen (15) minutes.**

14           **10. Exhibit Lists**

15           **A.**     On **October 29, 2021**, after conferring with counsel at the  
16                   pretrial conference each party shall file a list of exhibits the party  
17                   intends to introduce at trial. Each party shall also email copies  
18                   of their exhibit list to the Court at  
19                   [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov). The parties shall provide  
20                   their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

**B.** The USAO shall consecutively number their exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting “x” for each Defendant’s assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

**11. Witness Lists.** On **October 29, 2021**, after conferring with counsel at the pretrial conference, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any**



1 **CI the USAO intends to call to testify.** Parties shall email copies of  
2 their witness list to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

3 **12. Trial Briefs, Proposed Jury Instructions and Verdict Form, and**  
4 **Requested Voir Dire. By no later than October 27, 2021,** after  
5 conferring with counsel at the pretrial conference, each party shall file  
6 a trial brief, proposed jury instructions and verdict form, and requested  
7 voir dire, in accordance with the requirements below. Each party shall  
8 email copies to the Court at [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

9 **A. Trial Briefs.** Trial briefs shall not exceed twenty (20) pages  
10 without prior Court approval, upon motion and good cause  
11 shown.

12 **B. Proposed Jury Instructions and Verdict Form.** Jury  
13 instructions shall 1) address issues that are unique to the case,  
14 and 2) include instructions regarding the elements of each  
15 charge or defense. If a Ninth Circuit Model Jury Instruction  
16 exists for a particular charge or defense, the parties shall provide  
17 the model instruction or shall submit argument as to why the  
18 instruction is inadequate or no longer supported by law.  
19 Proposed jury instructions shall be accompanied by a proposed  
20 verdict form. **The parties must confer to develop joint**

1           **proposed jury instructions and the verdict form.** The Court  
2           will only accept an individual party’s proposed jury instructions  
3           on those points/issues upon which the parties could not agree,  
4           and only if the party’s memoranda accompanying the  
5           individually-proposed instruction(s) sets forth the legal  
6           authority and justification for why the instruction is necessary.

7           **C. Requested Voir Dire.** The parties may request that the Court  
8           include specific questions during the Court’s standard voir dire.  
9           Requested voir dire shall not duplicate information elicited in  
10          the Clerk’s Office Jury Questionnaire (“COJQ”) and the Court’s  
11          Criminal Jury Trial Procedures Letter.

12          **13. Exhibit Binders.** By no later than October 29, 2021, after conferring  
13          with counsel at the pretrial conference, each party must provide to all  
14          other parties and to the Court a Bates-stamped copy of all trial exhibits  
15          — or, in the case of physical exhibits, a photograph or other  
16          reproduction of the exhibit — the party intends to introduce at trial.  
17          All trial exhibits shall be organized sequentially by exhibit number in  
18          a three-ring binder.

1           **14. JERS.**

2           **A.**     The Court utilizes the Jury Evidence Recording System (JERS),  
3                   a system that makes electronic evidence available in the jury  
4                   room during deliberations. **Counsel shall promptly consult**  
5                   **the Court’s “JERS Instructions for Attorneys”<sup>4</sup> to ensure**  
6                   **they acquire, retain, and provide evidence to the Court in**  
7                   **the necessary format.**

8           **B.**     **By no later than November 2, 2021**, after conferring with  
9                   counsel at the pretrial conference, each party who intends to  
10                  introduce evidence at trial must supply a CD, DVD, or USB  
11                  drive to the Courtroom Deputy containing all of that party’s  
12                  exhibits in the required format. Counsel may contact the  
13                  Courtroom Deputy at (509) 943-8173 with any questions.

14          **15. Trial Notices. By no later than October 29, 2021**, after conferring  
15                  with counsel at the pretrial conference, each party shall file a notice  
16                  that indicates the amount of time requested for opening statement and  
17                  for voir dire. In addition, defense counsel must indicate if his/her client  
18                  waives presence at sidebar and jury questions.

19 \_\_\_\_\_  
20 <sup>4</sup> This document can be found on the Court’s public website at the following link:  
[http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-  
information-attorneys](http://www.waed.uscourts.gov/content/jers-jury-evidence-recording-system-information-attorneys).

**16. Technology Readiness Meeting.** By no later than November 2, 2021, any party seeking to offer video or audio evidence at trial must meet with Court staff at the location of the trial to verify compatibility with the Court's presentation systems. The parties shall contact the Courtroom Deputy at (509) 943-8173 to arrange this meeting.

**17. Trial.** The jury trial is SET for November 8, 2021, at 9:00 A.M. in YAKIMA. The final pretrial conference will commence at 8:30 A.M. on the first day of trial.

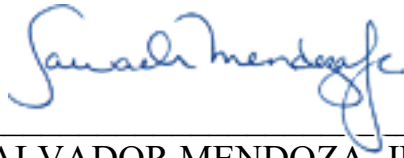
**18. Summary of Deadlines**

All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i> , filed	September 21, 2021
<b>PRETRIAL CONFERENCE</b> <i>Deadline for motions to continue trial</i>	<b>October 19, 2021</b> <b>11:45 AM - YAKIMA</b>
CIs' identities and willingness to be interviewed disclosed to Defendant (if applicable)	<b>October 25, 2021</b>
Grand jury transcripts produced to Defendant Case Agent: CIs: Other Witnesses:	<b>October 25, 2021</b> <b>October 25, 2021</b> <b>October 25, 2021</b>
Exhibit lists filed and emailed to the Court	<b>October 29, 2021</b>
Witness lists filed and emailed to the Court	<b>October 29, 2021</b>
Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court	<b>October 27, 2021</b>
Exhibit binders delivered to all parties and to the Court	<b>October 29, 2021</b>
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	<b>November 2, 2021</b>
Trial notices filed with the Court	<b>October 29, 2021</b>

Technology readiness meeting (in-person)	November 2, 2021
<b>JURY TRIAL</b>	<b>November 8, 2021</b> <b>9:00 AM - YAKIMA</b>

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals Service.

**DATED** this 9<sup>th</sup> day of September 2021.



SALVADOR MENDOZA, JR.  
United States District Judge